IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13494 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARORA INDUSTRIES - Petitioner(s)

Versus

ABDULHAMEED ABDULRASHEED - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 18/01/2006

ORAL JUDGMENT

Heard learned advocate Mr. Dipak R. Dave for petitioner. Notice of rule issued by this Court has been served upon respondent but no one has remained present on behalf of respondent. Respondent has also not remained

present in person before this Court. Therefore, this matter is taken up for final hearing in absence of respondent. While issuing rule, ad.interim relief in terms of paragraph 5(B) was granted by this Court.

2. In this petition, petitioner has challenged award passed by labour court, Ahmedabad in Recovery Application No. 2421 of 1994 dated April 2, 2003 wherein labour court has allowed application and directed present petitioner to pay Rs.28,828.80 to respondent workman towards dues of over time within thirty days from the date of receipt of copy of said order and also ordered to pay Rs.1000.00 towards costs for said application.

2. Learned advocate Mr. Dave appearing for petitioner submitted that labour court has no jurisdiction to examine disputed claims between the parties. He also submitted that since the claim of over time was not admitted by petitioner and since it was disputed by petitioner, labour court has erred in exercising powers under section 33-C-2 of ID Act, 1947. According to him, though evidence was accordingly given by petitioner before labour court, labour court granted amount of Over Time as if claim of respondent was

adjudicated upon and his right to receive such over time wage was crystallized and in doing so, labour court has committed jurisdictional error warranting interference of this Court in exercise of powers under Article 227 of Constitution of India. He also submitted that the claim of over time was not admitted by petitioner, respondent has not proved pre-existing right to get over time wages encashed by filing recovery application before labour court. So, respondent is not entitled for amount of over time which was granted by labour court and in doing so, labour court has committed jurisdictional error. He also submitted that labour court has not properly appreciated evidence of workman and witness of petitioner. Further, he submitted that normally, such application for recovery under section 33-C-2 of ID Act, 1947 is being filed by workman after termination of his service as a measure for bringing pressure on employer and such type of tactics are being adopted by union or workman. In this case also, such application for alleged unpaid over time wages of period of about six years was filed by workman only after termination of his service by petitioner and, therefore, such type of application is mala fide to have some bargaining with employer in termination case, therefore, considering all these aspects, labour court ought not to

have exercised jurisdiction under section 33-C-2 of ID Act, 1947 in favour of workman.

3. I have considered submissions made by learned advocate Mr. Dave on behalf of petitioner. I have perused order of labour court which is under challenge in this petition. I have also examined submission of Mr. Dave that labour court has no jurisdiction to adjudicate issue while deciding recovery application under section 33-C-2 of ID Act, 1947 as if it was having power under section 10 of ID Act. Law on this point is settled by Hon'ble Supreme Court. (See : Municipal corporation of Delhi versus Ganesh Razak and Another, 1995-I-LLJ 395 SC; Naranji Peraji Transport Co. versus Ramnikbhai B. Waghela, 1998 (1) GLH 88; Lallubhai Bapujibhai Parmar versus Panchmahal District Panchayat, 2005 (3) GCD 2621 (Guj); State of UP and Another versus Brijpal Singh, 2005 SCC (L&S) 1081; Regional Manager, Bank of Baroda v. Gitaben Harihai Darji (D) by LRs and others, 2005 Lab IC 2917; M/s. Central Group and others etc. v. Motiram S> Thakare and etc., 2005 Lab IC 2933].

In view of law laid down by apex court as well as this Court, claim which was made by workman before labour

court by filing application for recovery u/s. 33-C-2 of ID Act cannot be examined or right cannot be adjudicated by labour court while exercising such powers under sec.33-C-2 of ID Act, 1947. Pre-existing right was not proved by respondent before labour court as claim of respondent was not admitted by petitioner. On the contrary, such right was disputed by petitioner before labour court. Perusal of evidence of workman as well as petitioner makes it clear that such right was not crystallized by respondent before labour court. Looking to such evidence of petitioner and respondent before labour court in light of the law crystallized by apex court and this Court referred to herein above, labour court has committed jurisdictional error in granting recovery application in exercise of powers under sec. 33-C-2 of ID Act, 1947. Observation of labour court that petitioner has admitted such claim of over time wages is not correct and it is contrary to evidence on record. Therefore, finding of labour court, to that extent, is perverse and contrary to evidence on record. Further, respondent has filed recovery application after termination of his service by petitioner. For a period of upto six years, he never made any complaint before Government Labour Officer or any other higher authority

in respect of his claim for over time wag es. Not only that, during last six years from the date of date of his joining till date of termination, he never claimed before petitioner by giving such application for OT amount but raised such claim only after termination of his service by petitioner. After termination of his service, workman raised claim for Over Time wages for six years and it was admitted by him that prior to that, he had never complained or claimed for it before any authority or before petitioner. Therefore, it is a case filed by respondent against petitioner to have some pressure for settling matter against termination. It is also submission of learned advocate Mr. Dave that against termination, industrial dispute has been raised by respondent against petitioner and it has been referred to for adjudication to labour court. According to his submission, such conduct of respondent ought to have been appreciated by labour court. Labour court has not at all examined and appreciated such conduct of respondent.

Therefore, in view of above facts as well as considering law laid down by apex court and this court, labour court has committed error in examining matter

under sec. 33-C-2 of ID Act as if the claim was admitted by petitioner. Respondent has not proved pre-existing right which can be encashed by filing such application, Therefore, labour court has committed gross error in passing such order and, therefore, impugned order of labour court is required to be quashed as the finding of labour court are without jurisdiction, perverse and contrary to evidence on record.

Consequently, this petition is allowed. Order passed by labour court in Recovery Application No. 2421 of 1994 dated April 2, 2003 is hereby quashed. Said recovery application is hereby dismissed. Rule is made absolute. No order as to costs.

(H.K. Rathod,J.)

Vyas